IN THE

# Supreme Court of the United States

WILLEY, Clerk

October Term 1955

No. 685

ALPHA BETA FOOD MARKETS, INC., a corporation, *et al.*,

*Petitioners,*

*vs.*

RETAIL CLERKS UNION LOCAL No. 770, an unincorporated voluntary association, *et al.*,

*Respondents.*

**Petition for a Writ of Certiorari to the Supreme Court of the State of California.**

HAROLD F. COLLINS,
621 South Hope Street,
Los Angeles 17, California,
*Attorney for Petitioners.*

JAMES A. McLAUGHLIN,
650 South Spring Street,
Los Angeles 14, California,
*Of Counsel.*

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

## SUBJECT INDEX


PAGE

I.

Citations of opinions of State Courts ..... 1

II.

The final judgment of State Court ..... 3

III.

Effort made to obtain rehearing in State Supreme Court ..... 3

IV.

Statute conferring jurisdiction to review ..... 4

V.

Question presented for review ..... 5

VI.

Federal statutes involved ..... 6

VII.

Statement of the case ..... 6

VIII.

Federal question urged from inception of case ..... 11

IX.

Reasons for granting petition ..... 18

Conclusion ..... 20

## TABLE OF AUTHORITIES CITED


### CASES

PAGE

De La Rama S.S. Co. v. Pierson, 174 F. 2d 84 ..... 18

Joseph Denunzio Fruit Co. v. Crane, 79 Fed. Supp. 117; aff'd, 188 F. 2d 569 ..... 19

Mitchell v. Texas Housing Co., 265 S. W. 2d 157 ..... 18

Nussenbaum v. Chambers & Chambers, Inc., 322 Mass. 419, 77 N. E. 2d 780 ..... 18

Pringle Engineering & Mfg. Co., In re, 164 F. 2d 299 ..... 18

### MISCELLANEOUS

General Wage Procedural Regulations, Sec. 4.5, C. C. H. Emer. Labor Law Rep., par. 19,115 ..... 9

Wage Regulation 13 ..... 8

Wage Stabilization Board Resolution No. 64, C. C. H. Emer. Labor Law Rep., par. 20,010 ..... 9

### ORDER

Executive Order No. 10434 ..... 7

### RULES

Rules on Appeal, Rule 27 ..... 3

### STATUTES

62 Statutes at Large, p. 929 ..... 4

64 Statutes at Large, p. 803 ..... 6

64 Statutes at Large, pp. 807, 811 ..... 3, 6

65 Statutes at Large, p. 136 ..... 3, 6

United States Code, Title 28, Sec. 1257(3) ..... 4

United States Code Annotated, Title 50, App., Sec. 2101 ..... 6

United States Code Annotated, Title 50, App., Sec. 2105 ..... 3, 6

United States Code Annotated, Title 50, App., Sec. 2109 ..... 6

## INDEX TO APPENDIX


PAGE

Findings of Fact and Conclusions of Law of the Superior Court 13

Judgment of the Superior Court ..... 32

Memorandum Decision of the Superior Court of the State of California ..... 1

Opinion of the District Court of Appeal ..... 39

Opinion of the Supreme Court of the State of California ..... 57

Petition for Rehearing (reprint) ..... 69

IN THE

# Supreme Court of the United States

October Term 1955

No. .....

ALPHA BETA FOOD MARKETS, INC., a corporation; ALEXANDER'S MARKETS, a corporation; BETTER FOOD MARKETS, INCORPORATED, a corporation; THE BOYS MARKET, INC., a corporation; HARRY CAPLAN, INCORPORATED, a corporation; CARL'S RANCH MARKETS, INCORPORATED, a corporation; CRAWFORD STORES, INC., a corporation; FARMERS MARKETING COMPANY, INC., a corporation; FITZ-SIMMONS STORES, LTD., a corporation; GATEWAY FOOD STORES, INC., a corporation; GODFREY FOOD CO., INC., a corporation; HIRAM'S RANCH MARKETS, a corporation; JURGENSENS, a corporation; KING COLE MARKETS, INC., a corporation; LASAROW BROS. INC., a corporation; M M FOODS, INC., a corporation; MARKS FOOD CORPORATION, a corporation; McDANIELS MARKETS, a corporation; MARKET BASKET, a corporation; THE MODEL GROCERY CO., a corporation; PESSIN GROCERY COMPANY, a corporation; RAISIN MARKETS, INCORPORATED, a corporation; RALPHS GROCERY CO., a corporation; ROTHS MARKETS, INC., a corporation; SAFEWAY STORES, INCORPORATED, a corporation; STEWART BROS. MARKETS, INC., a corporation; VALLEY FOODS, INC., a corporation; VON'S GROCERY CO., a corporation; WESTERN INDUSTRIES CORPORATION, a corporation; FUTTERMAN AND GACH, a corporation, doing business under the fictitious firm name of SHOPPERS MARKETS; WEST SHORE COMPANY, a corporation, doing business under the fictitious firm name of ESKO, INC.; FOOD STORES, INC., a corporation, doing business under the fictitious firm name of HALES FOOD MARTS; HARRY CAPLAN, INC., a corporation, doing business under the fictitious firm name of CARL'S MKT. No. 6; HARRY CAPLAN, doing business under the fictitious firm name of CARL'S RANCH MARKETS; OWL DRUG CO., a corporation, doing business under the fictitious firm name of BIG OWL MARKET; AGNES M. CARTY and DONAL ARTHUR CARTY, copartners, doing business under the fictitious firm name of CARTY BROS.; MAX SCHWARTZ, ABE SCHWARTZ and BEN SCHWARTZ, copartners, doing business under the fictitious firm name of FOODS CO.; IRVING MOSS, PHILIP HARRIS and NATHAN B. MOSS, copartners, doing business under the fictitious firm name of HIRAM'S COUNTRY STORE; WALTER L. WEICK, doing business under the fictitious firm name of W. L. LAWRENCE PRODUCE; HAROLD F. ROBERTS, also known as H. F. ROBERTS, doing business under the fictitious firm name of ROBERTS MARKET; ALBERT KALIFF, DAVID STEIN and JEROME STEIN, copartners, doing business under the fictitious firm name of KINGS FOOD CENTER; PAUL KODIMER, doing business under the fictitious firm name of A B C MARKET; GEORGE B. KELLICK, doing business under the fictitious firm name of GEORGE'S MARKET; WILLIAM F. MATSUNO, doing business under the fictitious firm name of GOLDEN STATE PRODUCE CO.; LEO Z. JELIN, doing business under the fictitious firm name of CRACKER BARREL; LA BABE G. COREY, doing business under the fictitious firm name of MEADOW MARKET; DAN MONSON

and LARRY MONSON, copartners, doing business under the fictitious firm name of CIRCLE "M" MARKET; MAX GARTH, doing business under the fictitious firm name of BEST FOOD MARKET; HARRY GLICKMAN, MILTON GLICKMAN and PHIL GLICKMAN, copartners; SAM SERBER and YETTA SERBER, copartners; JOSEPH P. HUGHES and ELSA K. HUGHES, copartners; CLIFF HALL and VICTOR O. McGAUGHEY, copartners; GEORGE SELTZER and TONEY PERRICONE, copartners; M. B. ZISBIN; SAM NEWMAN; J. R. DAHL; ARSEN MELICKIAN; OSCAR O. JOHNSEN; VAUGHN BOWEN; and FOOD EMPLOYERS COUNCIL, INC., a non-profit corporation,

*Petitioners,*

*vs.*

RETAIL CLERKS UNION, LOCAL NO. 770, an unincorporated voluntary association; and JOSEPH T. DeSILVA,

*Respondents.*

---

## Petition for a Writ of Certiorari to the Supreme Court of the State of California.

---

*To the Honorable Supreme Court of the United States:*

The above-named petitioners respectfully pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of California rendered and entered December 16, 1955, and numbered therein as L. A. 23472, and in support of such petition, petitioners allege:

### I.

### Citations of Opinions of State Courts.

The opinion of the Supreme Court of the State of California as to which a review is sought was rendered on December 16, 1955, and is reported in Vol. 45 Advance California Reports 790 (No. 23, issued Dec. 27, 1955).[1] An earlier opinion written by the District Court of Appeal of the State of California laid down a rule contrary to that announced by the state Supreme Court. This

---

[1]Cited as 45 A. C. 790; also reported in 291 P. 2d 433; see Appendix, p. 57.

opinion was dated April 28, 1955, and is reported in Vol. 132 Advance California Appellate Reports at page 688.[2] Copies of each of these opinions are set forth in the Appendix to this petition.

## II.

## The Final Judgment of State Court.

The original judgment was one in a declaratory relief proceeding rendered by the Superior Court of the State of California, In and For the County of Los Angeles,[3] on April 19, 1954, and entered on April 26, 1954. The above-mentioned decision of the state Supreme Court, dated December 16, 1955, now constitutes the final judgment of record. Following the decision by the state Supreme Court, and within the fifteen days permitted by Rule 27 of that court's Rules on Appeal, petitioners petitioned for a rehearing in which they again urged the importance of correctly interpreting the Defense Production Act of 1950.[4] This petition for rehearing was denied by the state Supreme Court, without opinion, on January 5, 1956, thereby leaving no further remedies available to petitioners in the state courts.

## III.

## Effort Made to Obtain Rehearing in State Supreme Court.

On January 5, 1956, petitioners filed a Petition with the California Supreme Court that the remittitur be stayed pending the action by this Honorable Court on petitioner's

---

[2]Cited as 132 A. C. A. 688. Also reported in 282 P. 2d 983; see Appendix, p. 39.

[3]The trial court.

[4]64 Stat. 807 and 64 Stat. 811 amended by 65 Stat. 136, 50 U. S. C. A., App. 2105, *et seq.*

contemplated Petition for Writ of Certiorari. Notwithstanding this, the state Supreme Court made an order on January 12, 1956, denying petitioners' petition that the remittitur be stayed, and the basis for this action of the state Supreme Court is that there is no final judgment by it until the remittitur has been sent from the Clerk of the Supreme Court to the Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, and, therefore, there could be no final judgment from which a Petition for Writ of Certiorari could be filed until such time as the remittitur has been forwarded to the Clerk of the said Superior Court. Since the denial of the petitioner's Petition for Stay of Remittitur, the remittitur was filed with the Clerk of the Superior Court of the State of California on January 20, 1956, and the decision of the Supreme Court of the State of California is now final in all respects.

## IV.

## Statute Conferring Jurisdiction to Review.

The section which appears to confer jurisdiction to review this decision is Section 1257(3) of Title 28, United States Code.[5] This section permits certiorari where petitioners have claimed immunity from liability in reliance upon a Federal Statute. In this instance, it is claimed that the Defense Production Act of 1950 confers such immunity by rendering void the contract as construed by the state Supreme Court. The state Supreme Court construed the contract as providing for the payment of premium pay upon the termination of wage controls, even though the stipulated Wage Board approval was never forthcoming. Such a construction is either er-

---

[5]62 Stat. 929, 28 U. S. C. A. 1257(3).

roneous, in which event no liability would exist to pay such premium pay, or if the contract merits such a construction, the contract would then be void as contrary to the provisions and the declared purposes and objectives of the Defense Production Act.

## V.

## Question Presented for Review.

The question presented for review is whether an agreement could lawfully be made, during the period when wage controls were in operation under the Defense Production Act of 1950, specifying an increase in compensation which would become effective and start to accrue when wage controls were terminated. At all times, petitioners have contended that the contract never expressed such an intent, and the decision of the District Court of Appeal sustained them in this position. The state Supreme Court held to the contrary, and also ruled that a contract providing for increased pay to take effect upon the termination of wage controls was not void as being in violation of the Defense Production Act of 1950. If the contract, as construed by the state Supreme Court, did violate the Defense Production Act, it would be void and no rights could accrue thereunder. According to the construction applied by the District Court of Appeal, the contract did not violate the Defense Production Act, for the reason that it did not contemplate any premium pay commencing to accrue unless and until approved by the Wage Board, which approval never took place. Thus, the decision that the premium pay provisions in the contract were, nevertheless, valid squarely presents the issue as to the meaning and construction of the Defense Production Act of 1950.

## VI.

## Federal Statutes Involved.

The Defense Production Act of 1950 states:

> "No employer shall pay, and no employee shall receive, any wage, salary, or other compensation in contravention of any regulation or order promulgated by the President under this title . . ."
>
> 64 Stat. 807 amended by 65 Stat. 136, 50 U. S. C. A., App. 2105.

> "Any person who wilfully violates any provision of section 405 of this title (section 2105 of this Appendix) shall be guilty of a misdemeanor and shall upon conviction thereof, be subject to a fine of not more than $10,000, or to imprisonment for not more than one year, or both."
>
> 64 Stat. 811 amended by 65 Stat. 136, 50 U. S. C. A., App. 2109.

The express purposes of the Act are:

> ". . . To prevent inflation . . .; to protect the national economy against future loss of needed purchasing power by the present dissipation of individual savings; and to prevent a future collapse of values."
>
> 64 Stat. 803, 50 U. S. C. A., App. 2101.

## VII.

## Statement of the Case.

The petitioners, sixty separate retail grocery enterprises, each having one or more stores in the Los Angeles area, had signed identical collective bargaining contracts with respondent union governing the terms of hire of their store clerks. These were dated January 1, 1950,

and were to expire on April 1, 1951. [Clk. Tr. p. 19, *et seq.*]

As of September 22, 1950, the parties modified the above agreement in several respects such as by granting increases in wages, implementing a health and welfare plan for the clerks, and extending the terms of the original agreement until December 31, 1955, with annual reopening rights being limited to negotiating of changes in straight time hourly rates of pay. [Sec. 6(b) of Modification Agreement, Clk. Tr. p. 25.]

Two weeks earlier, on September 8, 1950, the Defense Production Act of 1950 had been enacted, and the parties anticipated the imposition of wage controls by providing for negotiations on a broader basis than merely straight time hourly rates in the event that such wage controls might at any time prevent the parties from freely negotiating on, and placing in effect, any changes in straight time hourly rates. [Sec. 8(b) of Modification Agreement, Clk. Tr. p. 27.]

Wage controls were imposed by Executive Order No. 10434 of the President on January 24, 1951. At the next annual reopening in December, 1951, the respondent union's demands for negotiation on fringe items such as premium pay, as well as on straight time hourly pay increases, resulted in two further contracts. One of these, conveniently called "the January 1st Agreement," gave the clerks the highest pay increases then permitted under the Wage Board regulations. [Clk. Tr. p. 215, lines 2-7.] It also cancelled further reopening rights during the remainder of the five-year term, and substituted semi-annual wage changes based upon the cost of living indexes at such times. It also provided for a four cents per hour annual automatic increase. [Clk. Tr. p. 28.]

The other contract was a Submission Agreement whereby the parties submitted to arbitration the respondent union's demands for premium pay increases for night work and for work on Sundays and holidays. After specifying the union's demands for these fringe items, and for the determination thereof by the Board of Arbitration, the Submission Agreement stated:

> "If such award provides for any change in premium pay, such award shall be submitted for approval to the Wage Stabilization Board by joint petition of the parties hereto if then so required. The effective date of the Award shall be the date upon which it is approved by the Board, if such approval is necessary."

On May 12, 1952, the Board of Arbitration made its determination. [Ans., Clk. Tr. p. 42.] The award of the majority granted respondent union's premium pay demands with respect to night, Sunday and holiday work.

In order to bring the matter before the Wage Stabilization Board, the parties in the Submission Agreement agreed to file a joint petition with the Board. This was in accord with existing regulations. The parties therefore jointly signed the petition necessary to submit the matter of the three premium pay items to the Regional Wage Stabilization Board for its determination. [Ans., Clk. Tr. p. 43.]

The Regional Wage Stabilization Board had been authorized by the National Board to approve or deny petitions filed under specific regulations including General Wage Regulation 13. The resolution providing this authority stated:

> "1. The Regional Boards, under the supervision and direction of the National Board through its

> Executive Director, are authorized to process and act upon (approve, modify or deny) petitions for approval of adjustments in wages, salaries and other compensation with respect to the following: . . ." (Wage Stabilization Board Res. No. 64, adopted Sept. 18, 1951, revised July 3, 1952, C. C. H. Emer. Labor Law Rep., par. 20,010.)

The regulations further provided for review by the National Board of the decision of any regional Board upon its own motion or upon the filing of a petition for review. (General Wage Procedural Regulations, Sec. 4.5, adopted Sept. 20, 1951, C. C. H. Emer. Labor Law Rep., par. 19,115.)

The Board found that two of the items, the premium pay increases for night and holiday work, were not permissible under the regulations and these were denied approval. The third item, the Sunday premium pay increase, was approved and placed into effect. It is not in dispute. A petition for rehearing was filed by respondent union with the Regional Wage Stabilization Board concerning the two items which had been denied approval. Petitioners did not join because they did not accept as accurate the statistics as to the area practice relied upon by the respondent union and which were submitted to the Board by respondents. [Clk. Tr. p. 216, lines 1-32; Rep. Tr. p. 79.] Furthermore, there was no agreement, or requirement under the regulations, that petitions so join.

A rehearing was granted, and following the rehearing, the Board reaffirmed its previous ruling and denied the two premium pay items which are involved in this action. Thereafter, respondent union petitioned the National Board for review of the decision of the Regional Board.

The National Board had failed to take any action at the time controls were terminated on February 6, 1953, by Executive Order.

On January 28, 1953, which was approximately one week before the President's decontrol order, petitioners filed this action for declaratory relief in the California Superior Court to obtain a decree determining whether, upon the termination of wage controls, an obligation would arise to pay the night and holiday premium pay for work performed after the date of such termination of wage controls. On April 26, 1954, a judgment was entered decreeing that the obligation to pay such premium pay did arise as of the date of such termination. This judgment was reversed by the District Court of Appeal on April 28, 1955.[6] That Court said that any construction of the Submission Agreement to create such a liability would render the document void as violative of the Defense Production Act of 1950. The California Supreme Court thereafter reviewed the case and ruled contrary to the ruling of the District Court of Appeal.[7] In so ruling, the Supreme Court attempted to distinguish between a contract which called for payment of increases retroactively after controls were terminated, and a contract which called for non-retroactive payments which were to start upon the termination of controls.[8]

Such a distinction is not a logical or a realistic one because whatever was presently promised, during the period of wage controls, to take effect upon their termination, would have an immediate value and would, therefore, stimulate inflation. Such an attempted distinc-

---

[6]Appendix, p. 39.
[7]Appendix, p. 57.
[8]Appendix, p. 66.

tion would limit the effect of Federal wage stabilization policy to cash payments, totally failing to recognize that a note or a simple agreement to pay is merely a form of deferred payment. The following example will illustrate this:

Suppose that an employee is receiving the maximum pay allowed under wage controls of $100 per week. He demands $200 per week as the price for remaining on the job and passing up a job at a defense plant. The parties, knowing that no higher wage is then approvable, agree upon $300 per week with the additional $200 to commence when it is approved by the Wage Board, or, failing in that, when wage controls are terminated. There is no Wage Board approval, but wages are decontrolled. Under the decision of the state Supreme Court, it would be perfectly legal to make such a contract, and to start the payments upon the termination of wage controls, in spite of the employee's right forthwith to borrow money on such a contract, and the likelihood that he would immediately purchase many items on time payments in the expectation that he would soon begin to enjoy the higher wage of three times his present salary.

## VIII.

### Federal Question Urged From Inception of Case.

The Federal question herein presented was first presented to the trial court prior to the rendition of its decision. The complaint for declaratory relief stated the question in defining the controversy as follows:

> "That an actual controversy and dispute concerning the meaning and construction of the Submission Agreement exists between plaintiffs and defendants as follows:

"1. Defendants contend that if and when the restrictions and controls imposed by the United States Government upon wages are terminated, that the above-described premium pay for night work and holiday work shall automatically become due and payable from the plaintiffs for all such work performed by plaintiffs' retail food clerk employees immediately following the termination of such wage restrictions and controls, regardless of whether or not the Wage Stabilization Board shall have approved or disallowed the award of such premium pay. That the defendants have demanded that plaintiffs shall commence the payment of such premium pay for work performed on nights and holidays as soon as such restrictions and controls upon wages have been terminated.

"2. The plaintiffs dispute the above-described contention of the defendants, and contend that there shall never be any duty on the part of plaintiffs to pay any such premium pay for night work and holidays unless and until such premium pay is specifically allowed and approved by the Wage Stabilization Board in accordance with the statutes of the United States governing wages, and that under the terms of the Submission Agreement, approval of such premium pay by the Wage Stabilization Board is a condition precedent to any liability and duty on the part of plaintiffs to pay such night and holiday premium pay.

"3. The defendants dispute the contentions of the plaintiffs as set forth under subparagraph 2 hereinabove." [Clk. Tr. pp. 13-14.]

The briefs which were filed with the trial court are not a part of the record; however, the trial court's Memo-

randum Decision[9] shows that the point was directly presented at the time of the trial although the court does not cite the most persuasive authorities which petitioners had cited on the subject. The court says in its decision:

> "Plaintiffs' second point is this: That contracts for the payment of compensation which are subject to Wage Stabilization Board approval are effective only to the extent that the Board approves such compensation. This is true, of course, so long as such approval is required by law.
>
> "As I read them, the cases cited by plaintiffs in support of this contention are not applicable to the facts of this case. There can be no argument with the proposition as stated in *Morford v. Bellanca Aircraft Corporation,* 67 Atl. 542 (Del.) that 'any agreement for an unapproved increase in wages is illegal; it is contrary to public policy and is not enforceable in the courts.' This is necessarily the rule where the contract attempts to circumvent controls with respect to compensation payable for services rendered during the period when wage stabilization is in effect. It does not appear, however, that the parties are prohibited from contracting during the controlled period for a higher wage scale to become effective when controls are removed and relating only to services to be rendered after Board approval is no longer required as a matter of law. (*Cf. Nussenbaum v. Chambers and Chambers* (Mass.), 77 N. E. 2d 780.) The agreements between the parties hereto entered into on January 1, 1952, do not purport to provide for any future bonus payments for past services, and, as in this case, expressly anticipate the removal of wage controls. It is significant that all

---

[9]Appendix, p. 9.

the cases cited by plaintiffs relate to the legality of contracts for the employment of individuals in which provisions were made for additional compensation for services rendered during the period of controls. Here, on the other hand, by their agreements of January 1, 1952, the parties undertook to set the scale of wages and benefits for a period ending December 31, 1955, subject to Board approval in certain instances so long as such approval was required, and expressly agreed that there should be no reopening of negotiations during the life of the agreements. These agreements are not void as being contrary to public policy." [Appendix, pp. 8 and 9; and Clk. Tr. pp. 193-194.]

The trial court also dealt with the subject in its Conclusions of Law which were signed concurrently with its judgment. The following are the pertinent parts of these Conclusions:

"The provisions of said Submission Agreement with respect to approval of the said arbitration award by the Wage Stabilization Board, did not create or constitute a condition precedent to the finality of said award with respect to the said premium pay; that such previsions expressed only the legal requirement of federal government approval.

"V.

"The said Submission Agreement is not void as contrary to public policy.

"VI.

"Such government approval was a continuing legal requirement until February 6, 1953; that with the termination of wage controls on that date, pursuant to said Executive Order No. 10434, such legal requirement was eliminated with the necessary result

that the changes in compensation contained in said award could thereafter lawfully go into effect without the approval of any governmental body." [Appendix, p. 30; and Clk. Tr. p. 222.]

The point was again fully presented in the briefs before the District Court of Appeal, where the court embraced petitioners' position, without qualification. It said:

"Since no agreement was ever made that the disputed premium pay should become effective upon the lifting of controls, respondents are in unfortunate plight. To make such agreement while wage controls were effective would have been unlawful as violative of federal statutes. Wage controls could easily be evaded if employers might promise additional inducements payable after the passing of the national emergency. Such an agreement would be illegal. (De La Rama S. S. Co. v. Pierson, 174 Fed. 2d 84; Morford v. Bellanca Aircraft Corporation (Del.), 67 A. 2d 542, 545.) Wages could not be stabilized if such tricks were perpetuated by industry. The only way to effect the purpose of respondents and to make the premium pay effective now, is to make an agreement to such effect. In the absence thereof, respondents cannot by their *ipse dixit*, reverse a judgment that went against them during the emergency.

"*In re* Pringle Engineering & Manufacturing Company, 164 Fed. 2d 299, holds that the terms of a contract must be determined by the law in effect when the contract is made. Therefore, it is the law in force at the time of the agreement of the parties that determines whether it is valid. (12 Am. Jur. 659, sec. 164; Northern P. R. Co. v. Wall, 241 U. S. 87; 60 L. Ed. 905; Willcox v. Edwards, 162 Cal. 455, 461.)

"If any contract subsists for the premium wages, it was executed during the period of wage controls and is therefore illegal and inoperative. No rights grew out of it and none inhere in it. When the President's order was issued, it terminated the controls, and the regulations no longer interfered with industry's contracting with labor. But since contracts made during the period of controls contrary to statute are void, no rights may be asserted as having originated with such contract. The asserted increases are without substance."

The state Supreme Court, in holding contrary to the District Court of Appeal, said:

"While wage controls existed, collective bargaining agreements providing for a wage increase needed wage board approval, whether such approval was mentioned in the agreement or not; but except as above noted, the agreement itself, even if not approved, was not unlawful. Rather only the making of payments under an unapproved agreement was unlawful. Thus, upon the termination of wage controls, the necessity for wage board approval disappeared and there only remained the parties' lawful contract expressing the terms of their agreement." (45 A. C. at p. 796; and Appendix, pp. 62-63.)

It further said:

"The requirement of government approval for performance of a contract does not invalidate a lawful contract. (Nussenbaum v. Chambers & Chambers (Mass.), 77 N. E. 2d 780, 782-783.) During the period of wage controls, the function of the wage board was not to determine the merits of awarded pay increases pursuant to agreements reached between the contracting parties, but only to determine whether such increases would be inflationary in their

effect upon the nation's economy. Contrary to the argument of *amici curiae* for plaintiffs, the establishment of wage controls did not indicate that wage board approval was intended to operate as a yardstick in relation to the merit of negotiated pay increases; that until such approval was obtained, there was no effective contract between the parties; and unless approval was had before the termination of wage controls, there was nothing left of the parties' contract. Here the payment of the awarded increases would not be in violation of the law as wage controls had been terminated. Plaintiffs do not claim that the parties intended that any awarded increases which might take effect, either by reason of wage board approval or the termination of the requirement for such approval, should constitute, in reality, retroactive, increased payments for work previously performed. Therefore the cases cited by plaintiffs—De La Rama S. S. Co. v. Pierson, 174 Fed. 2d 84, and *In re* Pringle Engineering & Mfg. Co., 164 Fed. 2d 299—condemning intentional efforts to circumvent the wage control law by subterfuge, have no bearing on the question presented here." (45 A. C. pp. 798 and 799; Appendix pp. 65-66.)

The Petition for Rehearing which petitioners filed with the state Supreme Court again stressed the error in so construing the Defense Production Act of 1950 as to permit the making of contracts during any period of wage controls which would become enforceable upon the termination of controls. A copy of the Petition for Rehearing is reprinted in the Appendix, attached hereto, at page 69.

## IX.

## Reasons for Granting Petition.

The question thus decided by the California Supreme Court does not appear to have ever been determined by this Court, although, on several occasions, the question has been dealt with in other courts, including some United States Courts of Appeal and some United States District Courts. Most of those decisions deal with contracts made during a period of wage controls to pay adidtional compensation after the expiration of wage controls for services performed prior to such termination.[10]

With the exception of one case,[11] these decisions uniformly held such agreements to be void.

The cited decisions cannot be validly distinguished merely because they did not provide for the payment of the increased compensation for services to be performed after the termination of wage controls. The reasoning applied in those cases suggests no grounds for any such distinction. In fact, the reasoning of those cases would apply equally to a situation involving any deferred payment, whether for services performed during controls or for services to be performed after the termination of controls. In either instance, it is the *present promise to pay in the future* which frustrates the policy of the legislation. Furthermore, any attempted legal distinction between contracts dealing with promises to pay in the future would merely invite evasions whereby the contract would specify

---

[10]*De La Rama S. S. Co. v. Pierson* (9th Cir., 1949), 174 F. 2d 84 at 86 *et seq.; In re Pringle Engineering & Mfg. Co.* (7th Cir., 1947), 164 F. 2d 299 at 301 *et seq.;* and *Mitchell v. Texas Housing Co.* (Tex. Civ. App., 1954), 265 S. W. 2d 157.

[11]*Nussenbaum v. Chambers & Chambers, Inc.*, 322 Mass. 419, 77 N. E. 2d 780, expressly disapproved in *De La Rama S. S. Co. v. Pierson* (*supra*).

a higher figure for services to be performed after the termination of controls, in order to compensate for services performed during the period of controls. There would exist no means for detecting when such an evasion was being attempted by the parties, and it would be easy to thus circumvent the law.

The only case in which the question was squarely presented is *Joseph Denunzio Fruit Co. v. Crane* (S. D. Cal., 1948), 79 Fed. Supp. 117,[12] where the court, after holding a contract for payment of a procurement charge or commission to be void, said at page 137:

> "Although the contract in this case was made on October 3, 1944 (when there was a ceiling on the grapes), counsel for Joseph Denunzio takes the position that M. P. R. 426 *(supra)* would likewise be ineffective in this case for the reason that title to the grapes was not to pass until after December 10, 1944, at which time there was no ceiling thereon (the O.P. A. ceiling price on grapes having been removed on October 10, 1944), but the court is of the opinion that if this contract was invalid when made, its invalidity would not be removed by the lifting of the ceiling price on the grapes on October 10, 1944."

In conclusion, we emphasize that the question as to the necessary statutory construction is, indeed, a vital one. Twice within the last decade, this country has been subjected to legislative economic controls. The perimeter of permissability should now be clearly defined so as to avoid future confusion and to promote an efficient administration of controls. It must be defined in a manner consonant with the stated purpose of the legislation which

---

[12]Aff'd (9th Cir., 1951), 188 F. 2d 569.

will insure that subterfuges are not utilized for the purpose of nullifying the Act; otherwise, it will always be a simple matter for an employer, acting under pressure from his employees, to circumvent the law by promising his employees compensation ostensibly for future services but actually for present services.

Petitioners are not in the inequitable position of having knowingly entered into a contract which violated the law. They have contended, from the outset, that only that portion of the premium pay which was expressly approved by the Wage Board should ever commence to accrue,[13] and they have claimed that this is the only reasonable construction which the language of the contracts permits. The state Supreme Court by adopting a contrary construction of the contracts has invoked the erroneous interpretation of the Defense Production Act of 1950.

## Conclusion.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

HAROLD F. COLLINS,
*Attorney for Petitioners.*

JAMES A. MCLAUGHLIN,
*Of Counsel.*

---

[13]Original Complaint for Declaratory Relief, Clk. Tr. pp. 13-14.